



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	: HAV/43UH/LDC/2025/0635
Property	: 10a & 12 Thames Street, Staines Upon Thames, Middlesex, TW18 4SD
Applicant	: Ian David Limited
Representative	: Leete Estate Management
Respondent	: Miriam Mickail
Representative	:
Type of Application	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	: Regional Surveyor J Coupe FRICS Mr D Cotterell FRICS
Date of Hearing	: 10 September 2025
Date of Decision	: 24 September 2025

DECISION

Summary of the Decision

The Applicant is granted retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in relation to the erection of scaffolding on or around 25 March 2025 on health and safety grounds.

The Tribunal's decision is limited to the erection of scaffolding and does not encompass the subsequent remedial works carried out by the freeholder.

The Tribunal has made no determination on whether the scaffolding costs are reasonable or payable.

The Tribunal's decision does not extend to the commercial units in the building.

Background

1. The Applicant seeks retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 3 April 2025.
2. The Property is described in the application as a three-storey building originally comprising commercial units, which has since been extended to include two additional upper storeys of residential accommodation and the conversion of part of the original structure into twenty four flats.
3. The twelve commercial units in the building are not bound by this decision.
4. In Box 3 of the Leasehold 5 application, the Applicant seeks dispensation from the statutory consultation requirements in respect of the following items:

‘Dispensation is sought for the erection of the scaffold as the urgent need for its erection to act as a guard from any debris falling onto the public meant that the statutory 60 day consultation was not practical.

It is unlikely the license for the scaffold will be extended for the full consultation period, it may become necessary to commence works within the consultation period and before it expires.’

5. The Tribunal gave Directions on 17 June 2025 listing the steps to be taken by the parties in preparation for the determination of the dispute, if any.
6. The Directions stated that Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 14 days of the date of receipt of the Directions. Where a party objects to the application they were required to submit a statement setting out the grounds of their opposition, to provide evidence of what they would have done differently had the Applicant complied with the full statutory consultation process, and to furnish copies of all documentation relied upon.
7. An objection to both the application and to the matter being determined on the basis of written representations and without a hearing was received from Miriam Mickail, lessee of Flat 5 Waterside, 12 Thames Street.
8. No additional objections were received either by the Tribunal or the Applicant.
9. The matter was subsequently set down for a hearing on 10 September 2025. The Tribunal sat at Havant Justice Centre and the parties joined remotely by CVP link. The Applicant was represented by Mr Darren Leete, Director of Leete Estate Management and Ms Rebecca Chandler. The Respondent, Ms Mickail, did not attend.
10. Before proceeding with the hearing the Tribunal considered whether, in the absence of the Respondent, it was right to do so. On 3 July 2025 the Respondent objected to the application by email. Thereafter, the Tribunal issued correspondence to the Respondent, including notification of the hearing, via the same email address. The Tribunal were therefore satisfied that the Respondent was aware of the hearing and had chosen not to attend. Having considered the overriding objective of the Tribunal to deal with matters fairly and justly the Tribunal were satisfied that it was proportionate and in the interests of justice to proceed.
11. The Tribunal was provided with a hearing bundle comprising 66 electronic pages. References in this determination to page numbers in the bundle are indicated as [].
12. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This application is not about the proposed costs of the scaffolding, and whether they are recoverable from the leaseholders as service charges or the possible application or effect of the Building Safety Act 2022. The leaseholders have the right to make a separate application to the Tribunal under section 27A of the Landlord and Tenant**

Act 1985 to determine the reasonableness of the costs, and the contribution payable through the service charges.

13. These reasons address in summary form the key issues raised by the parties. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are critical to this decision. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.
14. The hearing was audio recorded, and the recording serves as the official record of the proceedings.

The Law

15. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease, the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
16. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:
Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
17. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
18. The leading judgment of Lord Neuberger explained that a Tribunal should focus on the question of whether the lessee will be, or had been, prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were a means to an end, not an end in themselves.
19. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

20. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.

21. The main, indeed normally, the sole question, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
22. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
23. If dispensation is granted, that may be on terms.
24. There have been subsequent Decisions of the higher Courts and Tribunals of assistance in the application of the Decision in Daejan but none are relied upon or therefore require specific mention in this Decision.

The evidence of the parties

25. Mr Leete stated that on 14 March 2025 a section of render from the front elevation of the building became dislodged and fell onto the public footpath. Following consultation with the Local Authority, it was determined that, for health and safety reasons, scaffolding needed to be erected immediately to safeguard members of the public.
26. An emergency scaffold license was subsequently granted, and scaffolding was erected on or around 25 March 2025.
27. Acting on advice from Leete Estate Management and in the interests of transparency, the Applicant retrospectively initiated the consultation process - while applying for dispensation in regards to the scaffolding element of the works - by issuing a Notice of Intention to the lessees regarding the proposed works. A copy of this Notice was not included in the hearing bundle.
28. As part of that process, lessees were invited to nominate contractors from whom quotations for the proposed works could be obtained. No nominations or responses were received.
29. In the absence of submissions, the freeholder – acting unilaterally according to Mr Leete – proceeded to instruct a contractor to undertake the full scope of the works, which ultimately incurred costs in the region of £80,000. Consequently, the lessees were not served with a

Notice of Estimates, nor were they provided with the contractors' quotation or the two alternative rendering quotations – reported to be £15,000 and £16,000 – on which they would have been entitled to comment. Mr Leete expressed frustration at the situation in which his firm found itself, asserting that it had occurred inadvertently.

30. During oral submissions, Mr Leete initially appeared to suggest that the dispensation application referred to the entirety of the £80,000 works, rather than solely to the emergency scaffolding. However, upon being referred to the wording of the application at page [9] of the hearing bundle, and in light of both his oral and written evidence – specifically that his firm had intended to issue a Notice of Estimates to the lessees – a step overtaken by the freeholder's unilateral decision to instruct a preferred contractor – Mr Leete revised his position. He subsequently acknowledged that the dispensation application concerned only the erection of the emergency scaffolding.
31. Although Ms Mickail did not attend the hearing, in reaching our decision the Tribunal has considered her written submissions at page [20] of the hearing bundle.
32. Ms Mickail stated that she had raised concerns about the condition of the wall with both the Applicant and Leete Estate Management in August 2023, and was assured that the matter would be investigated. However, no proactive steps were taken, which she contends led to the current urgent situation.
33. Ms Mickail further asserted that, due to the absence of consultation, she suffered both financial and practical prejudice. She was denied the opportunity to propose alternative contractors or more cost-effective solutions, to comment on the scope and timing of the works, and to receive clarity regarding the costs.
34. In response, Mr Leete acknowledged that there had been correspondence between his firm and Ms Mickail at around that time, but stated that her concerns related to general management and maintenance issues, rather than any specific concern about the condition of the wall in question.
35. Mr Leete referred to his firm's email reply to Ms Mickail dated 11 August 2023, which addressed multiple issues including the condition of the rear of the building, the car park and gate, the reception and entrance, fly tipping, cleaning and maintenance. [23] Ms Mickail's original email was not included in the hearing bundle.
36. In oral submissions responding to Ms Mickail's statement, Mr Leete accepted that she may have been prejudiced insofar as she was not given the opportunity to comment on the quotations obtained by the freeholder, and that the freeholder had instructed a contractor without inviting alternative quotations. However, Mr Leete maintained that Ms Mickail had not been prejudiced by the decision to erect the emergency

scaffolding, which is the sole subject of the present dispensation application.

Consideration

37. Dispensation from consultation requirements is sought due to an incident in which a section of masonry fell from the building's front elevation onto the footpath. To mitigate risk to the public, an emergency scaffolding licence was promptly obtained from the Local Authority, and scaffold was erected within eleven days. Having reviewed the evidence, the Tribunal is satisfied that the qualifying works – namely, the erection of scaffolding – were urgent in nature.
38. With the exception of the response from Ms Mickail, there has been no additional objections to the application for dispensation of the consultation requirements from any other Lessee.
39. The Tribunal has carefully considered the written submissions of Ms Mickail, notwithstanding her absence from the hearing. Her concerns regarding the general repair and maintenance of the building, raised in August 2023, are noted. However, the Tribunal has no evidence that Ms Mickail specifically raised the issue of the front elevation as she did not provide a copy of her email to the managing agent and nor did the Applicant include this in the hearing bundle.
40. The Tribunal accepts that Ms Mickail was not afforded the opportunity to participate in a full statutory consultation process, including the ability to propose alternative contractors, comment on the scope and timing of the works, or receive clarity on the overall costs. The Tribunal finds that this lack of consultation has, in principle, the potential to cause prejudice, a point which was conceded by Mr Leete.
41. However, the Tribunal finds that while Ms Mickail asserts prejudice she has not – as required in paragraph 17 of the directions [16] – provided any evidence as to what she would have done differently had she been consulted in regard to the erection of scaffolding, nor provided any documents or evidence to support her position.
42. Furthermore, the Tribunal considers it relevant that when Ms Mickail was provided with the opportunity to comment on the Notice of Intention issued by the Applicant and to nominate contractors – notwithstanding that the freeholder subsequently abandoned the consultation process – she did not do so.
43. The Tribunal accepts Mr Leete's clarification that while the freeholder's subsequent decision to instruct a contractor without completing consultation may have caused prejudice in relation to the broader remedial works, – a point on which this Tribunal makes no findings – such matters fall outside the scope of the present application.

44. The Tribunal finds that Ms Mickail has not demonstrated what, if anything, she would have done differently if full consultation had been undertaken. In the circumstances, the Tribunal considers that the Applicant acted prudently, and that full consultation at the time would likely have caused unnecessary delay and compromised safety.
45. The Tribunal finds that Ms Mickail has not suffered any prejudice as a result of the Applicant's failure to carry out full consultation regarding the erection of scaffolding.
46. Accordingly, the Tribunal concludes that it is reasonable to dispense with all formal consultation requirements in respect of the 'emergency' scaffolding.
47. This Decision is confined to the issue of dispensation from consultation requirements solely in relation to the erection of scaffolding.
48. The Applicant has not sought dispensation for the wider remedial works, stated to have cost in the region of £80,000. Should the freeholder seek to recover these costs through the service charge, further dispensation may need to be sought. The parties are advised to seek independent legal advice on this matter.
49. The Tribunal has made no determination on whether the costs of the scaffolding are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

DECISION

50. The Applicant is granted retrospective dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in relation to the erection of scaffolding on or around 25 March 2025 on health and safety grounds.
51. The Applicant is required to provide a copy of this decision to all lessees and to display a copy for a minimum of 60 days in a prominent location within the communal areas of the building.

RIGHTS OF APPEAL

52. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
31. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
32. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
33. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.